



# HIGHLAND CITY APPEAL AUTHORITY MINUTES

## Tuesday, December 15, 2020

Highland City Council Chambers, 5400 West Civic Center Drive, Highland UT 84003

**Appeal Officer Vaughn Pickell**

### **5:00 PM CALL TO ORDER**

Present: Vaughn Pickell, Appeal Authority, City Recorder Stephannie Cottle, Planner & GIS Analyst Kellie Bronson, Gary Simmonds

The meeting started at 5:00 pm.

### **1. VARIANCE REQUEST**

A request by Gary Simmonds to request a variance from Section 3-4104.2 to reduce the side yard setback from 15 feet to 12 feet for an exterior stairwell.

Vaughn Pickell introduced himself as the appeal officer and introduced Gary Simmonds as the appeal applicant. Vaughn Pickell explained that the applicant had the burden of proof in appeal cases, which meant that the applicant had to prove all five criteria were met for their case. He noted that the applicant Gary Simmonds had done a good job of that. He further explained that that evening, Gary Simmonds would have the opportunity to make a statement justifying his appeal request, and then he, Vaughn Pickell would ask questions about each element in order to pull things out on the record. He clarified that they would not make a decision that evening, and that Gary Simmonds could expect to receive a written decision in seven to ten days.

Gary Simmonds clarified that the address he was seeking a variance on was 11169 N Park Circle. It was clarified that this property was located in subdivision lot#112, and was 8,730 square feet, located in a cul-de-sac. GIS Analyst Kellie Bronson confirmed that it was in low-density residential R-140 zoning.

Gary Simmonds explained his rationale for a variance. He stated that he and his wife had finished their basement for their disabled daughter, so she could be independent but still be monitored. He said that the lots in the subdivision were all about the same size, but his lot had a weird shape, so they were limited on how they could build on that lot. He noted that lot next to them to the south of his property had a significantly bigger home because the shape of the lot was different and said that some other homes in the subdivision already had outside stairwells. He clarified that if his home had an outside stairwell, there would still be about 60 feet between the outside of the stairwell and the jogging path that was next to his lot. He added that since other homes nearby had outside stairwells, an outdoor stairwell in his home would not be incongruous with the existing subdivision. He did note though that due to the way it was landscaped, the stairwell would not be visible. He had found that the encroachment into the setback would be about two to three feet. Gary Simmonds reported that he had considered other areas to put the staircase, but the only other place they could put it would require them to take two windows

out of the basement, which he did not want to do since it would require bringing in an engineer and they were limited with windows in the basement already. He thought that it would be too dark in the basement if they removed all the windows in the main room, and also pointed out that while it would still meet the fire code, he thought it would not be wise to remove ways to get out of the basement in case of an emergency.

Vaughn Pickell asked what the specific ordinance that Gary Simmonds wanted a variance for, and Gary Simmonds replied it was the R-140 side setback ordinance, which said that there be a 15-foot setback when the lot was next to a jogging path. GIS Analyst Kellie Bronson said the R-140 ordinance required there be 15 feet setback to the side, and 30 feet in the front and back of the property, regardless of if the lot backed up to public or private property. Gary Simmonds said that the jogging path was about 28 feet from the northwest corner of his house, and it got closer to the home as the house went towards the street.

Vaughn Pickell asked where the public utility easements were located on the property, and if a stairwell would encroach onto them. Gary Simmonds replied that he had called Blue Stakes and they had come and marked all the easements on his property and had found that a stairwell would not encroach on any utilities. Gary Simmonds said that in his front yard, there was one easement that ran to the gas meter and that was the only utility that was on his property.

Vaughn Pickell then asked about the deeds that had been submitted in Gary Simmond's application, that appeared to be from Highland City. Gary Simmonds explained that when he was first working on his request for a variance, GIS Analyst Kellie Bronson had sent an example of variance requests to work from to provide him a template to work from. Vaughn Pickell clarified that Gary Simmonds had included the deeds to show that other homes in his subdivision had bought adjoining open space from the City in the past in order to establish a precedent for his request.

Vaughn Pickell moved on to the five criteria that had to be met, the first being unreasonable hardship caused from circumstances that are peculiar to the property. Gary Simmonds explained that his plot plan has five corners that went up to the setback. While it had not been his preference, he had taken what plot was available. They had had to make custom plans to accommodate the angles and strange setbacks. This had left them with less room to put in exterior stairs and an upstairs living space, and it was not until they had built the house that they had decided to put in exterior stairs for their daughter. Gary Simmonds conceded that there were other lots that had this problem, so they were not unique in that, but argued that there were more houses that did not have that restriction.

Vaughn Pickell summarized that since Gary Simmond's house could only be as big as the buildable area was, there was really no area to put in a stairwell. He then asked about what the hardship to Gary Simmonds would be if the City chose to enforce the ordinance. Gary Simmonds said that he wanted his daughter to be able to live independently as much as she could and wanted her to have her own entrance to the house. He said she was 22 years old and went to ATAC in American Fork, but that she would likely not be able to live completely independently. Allowing her to have her own space was his way of giving her a place to live.

Vaughn Pickell asked how the enforcement of the ordinance in this particular case was unnecessary, or how it did not fall in line with the general purpose of the ordinance.

Gary Simmonds replied that it did not necessarily go against the general purpose of the neighborhood. He would not add another building or increase the density of the area. They would encroach upon the setback even more if they landscaped around the window wells, but since that would not be permanent it would not be an issue. He pointed out that the gas meter stuck out farther than a hypothetical stairwell would, the only difference being that the stairs would be poured concrete.

Vaughn Pickell asked if Gary Simmonds had applied for an accessory dwelling unit in the basement, or if there was anything else that he would have to do with the City to get it approved. Gary Simmonds said that they would

only need that if they were to rent it out to others, but since it would only be used by their daughter it would not be needed.

Vaughn Pickell asked if the construction of the stairway be impossible without a variance, and if it could go elsewhere on the lot. Gary Simmonds said that the only other possible place would still cross the setback by about six inches, and they would lose two windows.

Vaughn Pickell asked how much the additional cost would be to put it on the rear of the house. Gary Simmonds said that the construction of the stairway would be the same but would require the removal of the windows which would be expensive. They would need to take one window and extend it by an additional two feet, and the footings had not been poured for that so they would have to hire an engineer, which would also be a greater expense, although he did not know exactly how much.

Vaughn Pickell said that the lot itself was not unusual, and asked Gary Simmonds to explain for the record what made the lot unique to build on. Gary Simmonds said that the curb dipped in on the corner section of their lot, and that made their garage sit significantly forward from their house since their house had to be set farther back on order to meet the setback requirements. He said that they could not have built a square house on the property unless they had made it small, which then would not have met the size requirements for the subdivision. Vaughn Pickell asked what the size requirements were for the size of the house. Gary Simmonds said that while there was not a specific requirement for the size in their HOA, there was a requirement that there be a certain amount of brick on the front of the home that would require a home of at least a size large enough to accommodate the brick requirements.

Vaughn Pickell asked what the physical topography of the lot was like. He asked if there were any steep slopes, or anything of that nature. Gary Simmonds said that the lot was fairly flat, although there was a little dip on the side of the house where they wanted to put the stairwell.

Vaughn Pickell said that the trail near the house made it a unique legal situation. Gary Simmonds said there was a path that met with the jogging path, which was City owned, and the issue was not the path that ran behind his home, but the path that was between his home and his neighbor's home would be too close to where the stairwell would go. He said there was about 60 feet between his house and the next house, and Vaughn Pickell clarified that that distance included both Gary Simmond's setback and the neighbors, as well as the city parcel. He asked if there were any other easements or rights of way that effected Gary Simmonds property. Gary Simmonds said that there was not one in relation to the variance. There was a Pressurized Irrigation easement on the back side of the house, but they were not close to that at all.

GIS Analyst Kellie Bronson clarified that Viewpoint was an Open Space subdivision, which was why they had different setbacks. There were 17 lots in phase one, and four of the 17 lots had a 15-foot setback from the side of the trail. Five of the lots had a 25-foot setback because the trail ran behind them, and the other lots had a 20-foot setback, since they did not have a trail. She reiterated that they were just in phase one of four total phases.

Vaughn Pickell said that hardship could not be self-imposed and asked how Gary Simmonds could prove that the hardship was not self-imposed. Gary Simmonds said that while they could have built a smaller house, they would have lost three feet off all of their bedrooms and reiterated that they had not thought about an exterior stairwell at the time that the house was constructed.

Vaughn Pickell said that Gary Simmonds knew about the curved front line when he had bought the property, and that it seemed to him that he had maximized the use of the buildable area, and now he wanted to use the setback area as well. He asked Gary Simmonds how he could prove that was that not self-imposed. Gary Simmonds conceded that it was somewhat self-imposed, but he added that the lot had unique circumstances with curves and setbacks. He did not have the largest house due to the lot shape and said that the odd shape of the lot limited what

they could do on the lot. He estimated that while their house was not the smallest in the lot, they were likely in the bottom half of lots in the subdivision.

Vaughn Pickell asked if there were other houses that had a stairway on the side or in the setback. Gary Simmonds knew of one neighbor that had had one when they bought the home, and there was another house that had added one several years after they had moved in.

Vaughn Pickell asked what Gary Simmonds that other people in his same zone would not have had if he were to be denied. Gary Simmonds replied that other houses in the same zone had outdoor stairways, so what he was asking for was not unique in his zone. Vaughn Pickell also asked if there was a substantial property right that others in his zone had that Gary Simmonds would be denied if he was not allowed to build the stairwell. He asked if the denial of the variance would preclude the finishing of the basement in some way. Gary Simmonds replied that they would still finish the basement for his daughter, but it would not have any semblance of independence. He wanted her to have her own entrance so that she could have the sense that she lived on her own.

Vaughn Pickell said that the next section was to prove that the variance would not substantially affect the General Plan and that it was not contrary to the public interest.

Gary Simmonds said that other homes had basement apartments with exterior stairways, so what he was asking for was not unique. Essentially, the basement would be one apartment, not multiple, so it would not change the density of the neighborhood at all. Even if they did eventually rent it out, it would not change the density from what the City already allowed in that zone.

Vaughn Pickell said that there was 60 feet separating Gary Simmond's home from his neighbor to the north. Gary Simmonds said that they had originally considered installing the stairwell on that side, but it encroached on the setback by about five feet. He said that if he were the neighbor, he would not like that and so they had not pursued that option further.

Vaughn Pickell asked what the landscaping around the house was like. Gary Simmonds said that when they put the stairwell in, they would take out the flowerbed from that side of the house, and place perennial bushes around the base of the stairwell.

Vaughn Pickell said that they next needed to prove that the spirit of the land use ordinance was observed, and substantial justice was done, and asked Gary Simmonds to explain how the granting of the variance would still uphold the spirit of the land use ordinance. Gary Simmonds replied that many homes in the City had basement apartments, and that the encroachment on the setback would be minimal. He added that the landscaped portion of his property would still be larger than many other homes in the area, because they had larger homes. He also said that the stairs would not be visible from the street,

Vaughn Pickell thought that the ordinance was designed to have a greater setback next to the trail and asked the reason for that. He said that setbacks were typically intended to separate homes, so he thought the extra width would have been helpful in this case. He noted that a standard setback was 15 feet, but in this case the setback was bigger because it was in an Open Space subdivision.

Gary Simmonds replied that many lots in Highland had bigger lots with the same setback rules, and that while his lot is smaller, he, and others in his neighborhood were still required to meet the same setbacks. GIS Analyst Kellie Bronson noted that because they were in an R-140 Zone with an Open Space overlay, it was unique, and said that she thought the intent was to work around the irregular shape. She clarified that was just a guess, and she did not know the history of the subdivision. She also stated that the standard for the trail corridor was 30 feet and 10 feet for the trail.

Vaughn Pickell asked Gary Simmonds what the minimum amount of setback variance would be needed to create the stairwell, and Gary Simmonds said that he would need three feet, which would make the stairwell just wide enough to get furniture down it.

Vaughn Pickell asked how substantial justice would be done by granting the variance. Gary Simmonds said that the granting of the variance would give them the same rights that other people in the neighborhood already had. He stated that they were a smaller home on an oddly shaped lot, and that people who had larger homes would not encroach on the setback the same way that he did. He thought they should be allowed to have an exterior entrance on the outside of his house.

Vaughn Pickell asked if there were any questions, and there were none. He thanked Gary Simmonds for his time and told him that he could expect a written decision from him in the near future.

The meeting adjourned at 5:44 pm.

## **ADJOURNMENT**